

**National Pollutant Discharge Elimination System
General Permit for Discharges from Small Municipal Separate Storm Sewer Systems**

Permit Nos: NMR040000, NMR04000I, OKR04000I

Authorization to Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act (CWA), as amended (33 U.S.C. §1251 et seq.), except as provided in Part 1.4 of this permit, operators of small municipal separate storm sewer systems located in the area specified in Part 1.1 are authorized to discharge pollutants to waters of the United States in accordance with the conditions and requirements set forth herein.

Only operators of small municipal separate storm sewer systems in the general permit area who submit a Notice of Intent and a storm water management program in accordance with Part 2 of this permit are authorized to discharge storm water under this general permit.

This permit becomes effective on _____, 2003

This permit and the authorization to discharge expire at midnight, _____, 2008

Signed and issued this _____ day of _____, 2003.

Miguel I. Flores
Director
Water Quality Protection Division

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PART 1 COVERAGE UNDER THIS GENERAL PERMIT

- 1.1. Permit Area. The permit language is structured as if it were a single permit, with State, Indian Country Land or other area-specific conditions contained in Part 8. Permit coverage is actually provided by legally separate and distinctly numbered permits, all of which are contained herein, and which each cover one of the areas listed below. *Note: EPA can only provide permit coverage for areas and classes of discharges not within the scope of a State's NPDES authorization. For discharges not described in an area of coverage below, please contact the appropriate State NPDES permitting authority to obtain a permit.*

Permit Number	Areas of Coverage
OKS04000I	Indian Country Lands within the State of Oklahoma
NMS04000I	Indian Country lands within the State of New Mexico, except Navajo Reservation lands and Ute Mountain Reservation lands ¹ .
NMS040000	The State of New Mexico, except Indian Country Lands

1.2 Eligibility.

- 1.2.1 *Primary Coverage:* This permit authorizes the discharge of storm water from small municipal separate storm sewer systems (MS4s) provided the MS4:
- 1.2.1.1 Is located fully or partially within an urbanized area as determined by the 2000 Decennial Census. Maps of Census 2000 urbanized areas are available at: <http://cfpub1.epa.gov/npdes/stormwater/urbanmaps.cfm> , or
- 1.2.1.2 Is designated as a regulated small MS4 pursuant to 40 CFR 122.32.
- 1.2.2 *Secondary Coverage:* This permit may also authorize an operator of a MS4 covered by this permit for discharges from areas of a regulated small MS4 located outside an Urbanized Areas or area designated by the Director provided the permittee complies with all permit conditions in all areas covered under the permit. The permittee must include the boundary of areas covered by the permit in the MS4 map required under Part 5.2.3.2.

1.3 Non-Storm Water Discharges.

- 1.3.1 The permittee must prohibit all types of non-storm water discharges into its MS4 unless the discharges are authorized by a separate NPDES permit, are not required to

¹Navajo Reservation lands are administered by EPA Region 9 and Ute Mountain Reservation lands by EPA Region 8.

have a NPDES permit, or are addressed under Part 1.3.2.

- 1.3.2 The following categories of non-storm water discharges need not be prohibited if the permittee determines that they are not significant contributors of pollutants to the MS4, either because of the nature of the discharge or requirements placed on the discharger as a condition for discharging into the MS4. The permittee's list of "allowable" non-storm water discharges and documentation on their selection must be included in the SWMP. If any of the following categories of discharges are identified as a significant contributor by either the permittee or the Director, the permittee must address the category as an illicit discharge as specified in Part 5.2.3 of this permit:

- Water line flushing,
- Landscape irrigation,
- Diverted stream flows,
- Rising ground waters,
- Uncontaminated ground water infiltration,
- Uncontaminated pumped groundwater,
- Discharges from potable water sources,
- Foundation drains,
- Air conditioning condensate,
- Irrigation water,
- Springs,
- Water from crawl space pumps,
- Footing drains,
- Lawn watering,
- Individual residential car washing,
- Discharges from riparian habitats and wetlands,
- Dechlorinated swimming pool discharges,
- Street wash water,
- Discharges or flows from emergency fire fighting activities (does not include discharges from fire fighting training activities), and
- Other similar occasional incidental non-storm water discharges (e.g. non-commercial or charity car washes, etc.).

1.4 Limitations on Coverage This permit does not authorize:

- 1.4.1 *Non-Storm Water:* Discharges that are mixed with sources of non-storm water unless such non-storm water discharges are:

1.4.1.1 In compliance with a separate NPDES permit; or

1.4.1.2 Exempt from permitting under the NPDES program; or

- 1.4.1.3 Determined not to be a substantial contributor of pollutants to waters of the United States. See Part 1.3.2.
- 1.4.2 *Industrial Storm Water:* Storm water discharges associated with industrial activity as defined in 40 CFR §122.26(b)(14)(i)-(ix) and (xi).
- 1.4.3 *Construction Storm Water:* Storm water discharges associated with construction activity as defined in 40 CFR §122.26(b)(14)(x) or 40 CFR §122.26(b)(15).
- 1.4.4 *Currently Permitted Discharges:* Storm water discharges currently covered under another NPDES permit.
- 1.4.5 *Discharges Compromising Water Quality:* Discharges that EPA, prior to authorization under this permit, determines will cause, have the reasonable potential to cause, or contribute to an excursion above any applicable water quality standard. Where such a determination is made prior to authorization, EPA may notify you that an individual permit application is necessary in accordance with Part 6.18. However, EPA may authorize your coverage under this permit after you have included appropriate controls and implementation procedures in your storm water management program (SWMP) designed to bring your discharge into compliance with water quality standards.
- 1.4.6 *Discharges Inconsistent with a TMDL:* You are not eligible for coverage under this permit for discharges of pollutants of concern to waters for which there is an applicable total maximum daily load (TMDL) established or approved by EPA unless you incorporate into your SWMP measures or controls that are consistent with the assumptions and requirements of such TMDL. To be eligible for coverage under this general permit, you must incorporate into your SWMP any conditions applicable to your discharges necessary for consistency with the assumptions and requirements of such TMDL. If a specific wasteload allocation has been established that would apply to your discharge, you must incorporate that allocation into your SWMP and implement necessary steps to meet that allocation.

In a situation where an EPA-approved or established TMDL has specified a general wasteload allocation applicable to municipal storm water discharges, but no specific requirements for such discharges have been identified in the TMDL, you should consult with the State or Federal TMDL authority to confirm that adherence to a SWMP that meets the requirements of this general permit will be consistent with the approved TMDL. Where an EPA-approved or established TMDL has not specified a wasteload allocation applicable to construction storm water discharges, but has not specifically excluded these discharges, adherence to a SWMP that meets the requirements of this general permit will generally be assumed to be consistent with the approved TMDL. If the EPA-approved or established TMDL specifically precludes such discharges, the operator is not eligible for coverage under this general

permit.

1.5 Endangered Species Act (ESA) Eligibility Provisions

1.5.1 Coverage under this permit is available only if the MS4 operator's storm water discharges, allowable non-storm water discharges, and discharge-related activities are not likely to:

- jeopardize the continued existence of any species that are listed as endangered or threatened ("listed") under the ESA or result in the adverse modification or destruction of habitat that is designated as critical under the ESA ("critical habitat"); or
- cause a prohibited "take" of endangered or threatened species (as defined under Section 3 of the Endangered Species Act and 50 CFR 17.3), unless such takes are authorized under sections 7 or 10 of the Endangered Species Act.

By submitting a signed NOI, the operator certifies that it has met all eligibility criteria in this section.

1.5.2 "Discharge-related activities" include: activities which cause, contribute to, or result in storm water point source pollutant discharges; and measures to control storm water discharges, including the siting, construction, and operation of best management practices (BMPs) to control, reduce, or prevent storm water pollution.

1.5.3 Eligibility Criteria: Addendum A of this permit establishes a process that must be used to determine permit eligibility related to this provision. This eligibility must be evaluated before the NOI is submitted to EPA. The applicant must meet one or more of the criteria in Parts 1.5.3.1 through 1.5.3.5 for the entire term of coverage under the permit. The information used to make the eligibility determination must be documented and included as part of the Storm Water Management Program.

1.5.3.1 Criterion A: No endangered or threatened species or critical habitat are in proximity to the MS4 or the point where authorized discharges reach waters of the United States; or

1.5.3.2 Criterion B: In the course of a separate federal action involving the MS4, formal or informal consultation with the Fish and Wildlife Service (FWS) under Section 7 of the ESA has been concluded and that consultation:

- Addressed the effects of the storm water discharges, allowable non-storm water discharges, and discharge-related activities on listed species and critical habitat; and
- The consultation resulted in either a no jeopardy opinion or a written concurrence by the FWS on a finding that the storm water discharges, allowable non-storm water discharges, and discharge-related activities are

not likely to adversely affect listed species or critical habitat; or

- 1.5.3.3 Criterion C: The activities of the MS4 are authorized under Section 10 of the ESA and that authorization addresses the effects of the storm water discharges, allowable non-storm water discharges, and discharge-related activities on listed species and critical habitat; or
- 1.5.3.4 Criterion D: The applicant has evaluated, using best judgement and available scientific and commercial data, the effects of the storm water discharges, allowable non-storm water discharges, and discharge-related activities on listed endangered or threatened species and critical habitat. Based on the evaluation, the permittee has determined that there is no reason to believe the discharge and discharge-related activities are likely to adversely affect any federally-listed species or result in the adverse modification or destruction of critical habitat (NOTE: This option does not provide protection against liability for any incidental takes of an endangered species); or
- 1.5.3.5 Criterion E: The storm water discharges, allowable non-storm water discharges, and discharge-related activities were already addressed in another operator's certification of eligibility under Part 1.5.3.1 through 1.5.3.4 which includes the MS4 activities. By certifying eligibility under this Part, the applicant agrees to comply with any measures or controls upon which the other operator's certification was based.

1.6 National Historic Preservation Act (NHPA) Eligibility Provisions

- 1.6.1 Determining eligibility: In order to be eligible for coverage under this permit, the applicant must be in compliance with the National Historic Preservation Act. Discharges may be authorized under this permit only if:
- 1.6.1.1 Criterion A: storm water discharges, allowable non-storm water discharges, and discharge-related activities do not affect a property that is listed or is eligible for listing on the National Register of Historic Places as maintained by the Secretary of the Interior; or
- 1.6.1.2 Criterion B: the applicant has obtained and is in compliance with a written agreement with the State Historic Preservation Officer (SHPO) that outlines all measures the MS4 operator will undertake to mitigate or prevent adverse effect to the historic property.
- 1.6.2 Appendix B of this permit provides guidance and references to assist with determining permit eligibility concerning this provision. You must document and

incorporate the results of your eligibility determination in your SWMP.

PART 2 AUTHORIZATION UNDER THIS GENERAL PERMIT

2.1 Obtaining Permit Coverage.

- 2.1.1 An MS4 operator seeking authorization to discharge under this general permit must submit a complete notice of intent (NOI), in accordance with the deadlines in Part 3.1 of this permit. The NOI must include the information and attachments required by Parts 3.2 and 1.4.5 of this permit. By submitting a signed NOI, the applicant certifies that all eligibility criteria for permit coverage have been met.

If EPA notifies a discharger (either directly, by public notice, or by making information available on the Internet) of other NOI options that become available at a later date, such as electronic submission of forms or information, the MS4 operator may take advantage of those options to satisfy the NOI submittal requirements.

- 2.1.2 If an operator changes or a new operator is added after an NOI has been submitted, the operator must submit a new or revised NOI to EPA.
- 2.1.3 An MS4 operator who submits a complete NOI and meets the eligibility requirements in Part 1 of this permit is authorized to discharge storm water from the MS4 under the terms and conditions of this general permit 30 days after the date the NOI is postmarked. During the 30-day waiting period, EPA may evaluate the NOI information and, if appropriate, notify the operator of deficiencies or inadequacies and discuss steps needed to obtain permit coverage (see also Part 5.5.3).
- 2.1.4 If EPA notifies the MS4 operator of deficiencies or inadequacies in any portion of the NOI (including the storm water management program), the MS4 operator must correct the deficient or inadequate portions and submit a written statement to EPA certifying that appropriate changes have been made. The certification must be submitted within the time-frame specified by EPA and must specify how the NOI has been amended to address the identified concerns.

2.2 Terminating Coverage.

- 2.2.1 A permittee may terminate coverage under this general permit by submitting a notice of termination (NOT). Authorization to discharge terminates at midnight on the day the NOT is post-marked for delivery to EPA.
- 2.2.2 A permittee must submit an NOT to EPA within 30 days after the permittee:
- 2.2.2.1 Ceases discharging storm water from the MS4,

- 2.2.2.2 Ceases operations at the MS4, or
- 2.2.2.3 Transfers ownership of or responsibility for the facility to another operator.
- 2.2.3 The NOT will consist of a letter to EPA and must include the following information:
 - 2.2.3.1 Name, mailing address, and location of the MS4 for which the notification is submitted;
 - 2.2.3.2 The name, address and telephone number of the operator addressed by the NOT;
 - 2.2.3.3 The NPDES permit number for the MS4;
 - 2.2.3.4 An indication of whether another operator has assumed responsibility for the MS4, the discharger has ceased operations at the MS4, or the storm water discharges have been eliminated; and
 - 2.2.3.5 The following certification:

I certify under penalty of law that all storm water discharges from the identified MS4 that are authorized by an NPDES general permit have been eliminated, or that I am no longer the operator of the MS4, or that I have ceased operations at the MS4. I understand that by submitting this Notice of Termination I am no longer authorized to discharge storm water under this general permit, and that discharging pollutants in storm water to waters of the United States is unlawful under the Clean Water Act where the discharge is not authorized by an NPDES permit. I also understand that the submission of this Notice of Termination does not release an operator from liability for any violations of this permit or the Clean Water Act.
- 2.2.3.6 NOTs, signed in accordance with Part 6.8 of this permit, must be sent to: Small MS4 Notice of Termination, **(ADDRESS WILL BE PROVIDED IN FINAL PERMIT)**.

PART 3 NOTICE OF INTENT REQUIREMENTS

3.1 Deadlines for Notification.

- 3.1.1 *MS4s in Urbanized Areas.* MS4s automatically designated under 40 CFR 122.32(a)(1) are required to submit an NOI and a description of the storm water management program or apply for an individual permit within 90 days of the effective date of this permit.

- 3.1.2 *Designated MS4s.* MS4s designated under 40 CFR 122.26(a)(9)(i)(C) or (D), are required to submit an NOI and a description of the storm water management program within 180 days of notice of designation, unless the notice of designation grants a later date.
- 3.1.3 *New Operators.* For new operators of all or a part of a regulated MS4, the NOI must be submitted 30 days prior to taking operational control of the MS4.
- 3.1.4 *Submitting a Late NOI.* MS4 operators are not prohibited from submitting an NOI after the dates provided in Parts 3.1.1, 3.1.2, or 3.1.1. If a late NOI is submitted, the authorization is only for discharges that occur after permit coverage is effective. The permitting authority reserves the right to take appropriate enforcement actions for any unpermitted discharges.
- 3.2 Contents of Notice of Intent. An MS4 operator eligible for coverage under this general permit must submit an NOI to discharge under this general permit. The NOI will consist of a letter to EPA containing the following information (see Appendix C for suggested format):

The NOI must be signed in accordance with Part 6.8 of this permit and must include the following information:

- 3.2.1 The legal name of the federal facility or municipal entity and the name of the urbanized area and core municipality in which the operator's MS4 is located;
- 3.2.2 The full facility mailing address and telephone number;
- 3.2.3 The name and phone number of the person or persons responsible for overall coordination of the SWMP;
- 3.2.4 An attached location map showing the boundaries of the MS4 under the applicant's jurisdiction. The map must include streets or other demarcations so that the exact boundaries can be located;
- 3.2.5 The area of land that drains to the applicant's MS4 (in square miles);
- 3.2.6 The latitude and longitude of the approximate center of the MS4;
- 3.2.7 The name(s) of the waters of the United States that receive discharges from the system;
- 3.2.8 If the applicant is relying on another entity to satisfy one or more permit obligations (see Part 5.4), the identity of that entity(ies) and the element(s) the entity(ies) will be implementing;

- 3.2.9 Information on each of the storm water minimum control measures in Part 5.2 of this permit. For each minimum control measure, include the following:
- ✓ Description of the best management practices (BMPs) that will be implemented;
 - ✓ Measurable goals for each BMP; and
 - ✓ Timeframes (i.e., month and year) for implementing each BMP;
- 3.2.10 Based on the requirements of Part 1.5, describe how the eligibility criteria for listed species and critical habitat have been met;
- 3.2.11 Based on the requirements of Part 1.6, describe how the eligibility criteria for historic properties have been met; and
- 3.2.12 Signature and certification by an appropriate official (see Part 6.8). The NOI must include the certification statement from Part 6.8.4 .

- 3.3 Where to Submit. The MS4 operator must submit the signed NOI to EPA at the following address: **(ADDRESS WILL BE PROVIDED IN FINAL PERMIT)**

See Part 8 to determine if a copy must be provided to State or Tribal agencies.

- 3.4 Co-Permittees Under a Joint SWMP. Any small MS4 that meets the requirements of Part 1 of this general permit may choose to partner with another regulated MS4 to develop and implement a SWMP. The partnering MS4s must submit separate NOIs, but need only prepare one joint SWMP. If responsibilities are being shared as provided in Part 5.4 of this permit, the SWMP must describe which permittees are responsible for implementing each of the minimum measures. All small MS4 permittees are subject to the provisions in Part 5.5.

PART 4 SPECIAL CONDITIONS

- 4.1 Compliance with Water Quality Standards. Where a discharge is already authorized under this general permit and is later determined to cause or contribute to the in-stream exceedance of an applicable water quality standard, EPA will notify the permittee. The permittee must take all necessary actions to ensure that future discharges do not cause or contribute to in-stream exceedance of a surface water quality standard and must document these actions in the SWMP. If an exceedance remains or recurs, the coverage under this general permit may be terminated by EPA, and EPA may require an application for coverage under an alternative general permit or for an individual permit. Compliance with this requirement does not preclude any enforcement activity for any underlying violations of permit conditions.
- 4.2 Total Daily Maximum Loads (TMDLs) Allocations Established after Permit Issuance. If a TMDL is established for any waterbody into which the permittee discharges prior to the

date that the MS4 operator submits an NOI, and if that TMDL includes a wasteload allocation or load allocation for a parameter likely to be discharged by the MS4, the operator must meet the requirements of the TMDL and/or its associated implementation plan within any timeframes established in the TMDL. If a TMDL is approved for any waterbody into which the permittee discharges after the date that the permittee submits an NOI, EPA may require revisions to the SWMP to ensure that the wasteload allocation, load allocation and/or the TMDL's associated implementation plan will be met within any timeframes established in the TMDL. Monitoring of the discharges may also be required, as appropriate, to ensure compliance with the TMDL.

PART 5 STORM WATER MANAGEMENT PROGRAM (SWMP)

- 5.1 General Requirements. The permittee must develop, implement, and enforce a SWMP designed to reduce the discharge of pollutants from a small MS4 to the maximum extent practicable (MEP), to protect water quality, and to satisfy applicable surface water quality standards. The SWMP must include management practices; control techniques; system, design, and engineering methods; and other provisions EPA determines appropriate for the control of pollutants. Guidance on Minimum Measures, Measurable Goals, and Best Management Practices (BMPs) are available via <http://www.epa.gov/earth1r6/6wq/npdes/sw/ms4/>.
- 5.1.1 A permittee must fully implement the SWMP, including its measurable goals, no later than five years from the effective date of this permit (except as provided under Part 5.1.2.2 of this permit).
- 5.1.2 The SWMP must address each of the minimum control measures of Part 5.2. The SWMP must provide:
- 5.1.2.1 BMPs that are selected to ensure that the discharges do not cause or contribute to an exceedance of an applicable numeric or narrative water quality standard; and
- 5.1.2.2 Measurable goals, including interim milestones, for each BMP, including as appropriate, the months and years in which the MS4 will undertake the required actions and the frequency of the action. Program development and implementation schedules under this paragraph must provide for full implementation of a complete SWMP as soon as practicable, but no later than five years from the effective date of the permit. Credible interim progress in developing and implementing program elements must be made over the five year term of the permit.
- 5.2 Minimum control measures.

- 5.2.1 ***Public Education and Outreach on Storm water Impacts.*** The permittee must:
- 5.2.1.1 Implement a public education program to distribute educational materials to the community or conduct equivalent outreach activities about the impact of storm water discharges on waterbodies and the steps that the public can take to reduce pollutants in storm water runoff. For the purposes of this permit:
- 5.2.1.1.1 Traditional municipalities such as cities, counties, tribes, etc. must address the general public being served by the MS4.
- 5.2.1.1.2 Non-traditional municipalities such as universities, hospital complexes, prisons, special districts, etc. and federal facilities must address the community served by the MS4. For example, at a university it would be the faculty, other staff, students, and visitors, while at a military base, it would include military personnel (and dependents), contractors, employees, tenants, visitors, etc.
- 5.2.1.1.3 Departments of transportation must address the community working on or served by the transportation network within the MS4 including employees, contractors, and the general public.
- 5.2.1.2 Include the following information in the SWMP:
- 5.2.1.2.1 A description of the education program and outreach activities;
- 5.2.1.2.2 A description of the methods for disseminating information;
- 5.2.1.2.3 The target audiences and target pollutants and sources that the MS4 operator will address in the program, and how they were selected;
- 5.2.1.2.4 An estimation of the number of people with whom the MS4 operator intends to communicate;
- 5.2.1.2.5 A list of measurable goals for the public education and outreach program;
- 5.2.1.2.6 Dates by which the permittee will achieve specific measurable goals; and
- 5.2.1.2.7 The name of the person(s) responsible for implementing and coordinating the education activities.
- 5.2.2 ***Public Involvement/Participation.*** The permittee must:
- 5.2.2.1 Develop and implement a plan to encourage public involvement and participation in the development and implementation of the SWMP.

- 5.2.2.2 Develop and implement a process by which public comments to the plan are received and reviewed by the person(s) responsible for the SWMP;
- 5.2.2.3 Make the SWMP and NOI available to the public and to the operator of any MS4 or Tribal authority receiving discharges from the small MS4; and
- 5.2.2.4 Include the following information in the SWMP:
 - 5.2.2.4.1 A description of the general plan for informing the public of involvement and participation opportunities;
 - 5.2.2.4.2 The types of activities for public involvement that the program will include and the target audiences;
 - 5.2.2.4.3 A description of the procedure for receiving and reviewing public comments;
 - 5.2.2.4.4 An explanation of how interested parties may access the NOI and the SWMP;
 - 5.2.2.4.5 A list of measurable goals for the public involvement/participation program;
 - 5.2.2.4.6 Dates by which the permittee will achieve specific measurable goals;
 - 5.2.2.4.7 The name of the person(s) responsible for implementing and coordinating the public involvement/participation activities; and
 - 5.2.2.4.8 How the public was involved in the development of the SWMP submitted with the NOI.
- 5.2.2.5 The permittee must comply with State, Tribal and local public notice requirements when implementing the public involvement/participation program.
- 5.2.3 ***Illicit Discharge Detection and Elimination.*** The permittee must:
 - 5.2.3.1 Develop, implement, and enforce a program to detect and eliminate illicit discharges into the small MS4;
 - 5.2.3.2 Develop, if not already completed, a storm sewer system map, showing the location of all outfalls and the names and location of all waters of the United States that receive discharges from those outfalls (interim map may be submitted with NOI, with completion of map included as a SWMP schedule item);
 - 5.2.3.3 To the extent allowable under State, Tribal or local law, effectively prohibit

through ordinance or other regulatory mechanism, non-storm water discharges into the storm sewer system and implement appropriate enforcement procedures and actions (including enforcement escalation procedures for recalcitrant or repeat offenders);

- 5.2.3.4 Develop and implement a plan to detect, identify the source of, and address non-storm water discharges, including illegal dumping, to the system;
- 5.2.3.5 Inform public employees, businesses, and the general public of hazards associated with illegal discharges and improper disposal of waste;
- 5.2.3.6 Address the following categories of non-storm water discharges or flows (i.e., illicit discharges) only if the small MS4 identifies them as significant contributors of pollutants to the small MS4: water line flushing, landscape irrigation, diverted stream flows, rising groundwaters, uncontaminated groundwater infiltration (as defined in 40 CFR 35.2005(20)), uncontaminated pumped groundwater, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, spills, street wash water, and discharges from emergency fire fighting activities (however, emergency fire fighting does not include discharges from fire fighting training exercises or facilities, discharges from activities intended to prevent fires or from the testing of fire fighting equipment).

The permittee may also develop a list of other similar occasional incidental non-storm water discharges (e.g. non-commercial or charity car washes, etc.) that will not be addressed as illicit discharges. These non-storm water discharges must not be reasonably expected (based on information available to the permittees) to be significant sources of pollutants to the MS4, because of either the nature of the discharges or conditions the permittee has established for allowing these discharges to the MS4 (e.g., a charity car wash with appropriate controls on frequency, proximity to sensitive waterbodies, BMPs on the wash water, etc.). The permittee must document in the SWMP any local controls or conditions placed on the discharges, and include a provision prohibiting any individual non-storm water discharge that is determined to be contributing significant amounts of pollutants to the MS4.

- 5.2.3.7 Conduct dry weather field screening for non-storm water flows. The screening must include field tests of selected chemical parameters as indicators of discharge sources. Screening level tests may utilize less expensive “field test kits” using test methods not approved by EPA under 40 CFR 136, provided the manufacturers published detection ranges are adequate for the illicit discharge detection purposes. The permittee must investigate the illicit discharge within 15 days of its detection, and must follow up investigation with an action to further study the source of the discharge and ultimately eliminate the discharge.

- 5.2.3.8 Address on-site sewage disposal systems that flow into the storm drainage system;
- 5.2.3.9 Include the following information in the SWMP:
 - 5.2.3.9.1 A description of detection methods;
 - 5.2.3.9.2 A description or citation of the established ordinance or other regulatory mechanism used to prohibit illicit discharges. If the permittee needs to develop this mechanism, describe the plan and a schedule to do so.
 - 5.2.3.9.3 A description of enforcement policy and jurisdiction. The program must include procedures for coordination with adjacent municipalities and/or state or federal regulatory agencies to address situations where investigations indicate the illicit discharge originates outside the MS4s jurisdiction. Where the permittee lacks legal authority for direct enforcement action, the program must include notification procedures and if an illicit discharger fails to comply with procedures or policies established by the permittee, the permittee may rely on EPA and the state environmental agency for assistance in enforcement of this provision of the permit;
 - 5.2.3.9.4 A list of the non-storm water discharges allowed in the small MS4 because they are identified as non-significant contributors of pollutants to the small MS4. This list must also identify any additional categories of discharges (besides those named in the first paragraph of Part 5.2.3.6) that the MS4 intends to address as non-illicit discharges;
 - 5.2.3.9.5 The methods for informing/training employees about illicit discharges;
 - 5.2.3.9.6 The methods for informing the public of hazards associated with illegal discharges and improper disposal of waste;
 - 5.2.3.9.7 A list of measurable goals for the illicit detection and elimination program;
 - 5.2.3.9.8 Dates by which the permittee will achieve specific measurable goals; and
 - 5.2.3.9.9 The name of the person(s) responsible for implementing and coordinating illicit discharge detection and elimination activities.
- 5.2.4 ***Construction Site Storm Water Runoff Control.*** The permittee must:
 - 5.2.4.1 Develop, implement, and enforce a program to reduce pollutants in any storm water runoff to the small MS4 from construction activities that result in a land disturbance of greater than or equal to one acre. Reduction of storm water discharges from construction activity disturbing less than one acre must be

included in the program if that construction activity is part of a larger common plan of development or sale that would disturb one acre or more. The permittee is not required to develop, implement, and/or enforce a program to reduce pollutant discharges from small construction activities waived by the Director under 40 CFR 122.26(b)(15)(i)(A) or (B);

- 5.2.4.2 Using an ordinance or other regulatory mechanism available under the legal authorities of the small MS4, require construction site operators to practice erosion and sediment control and require construction site operators to control waste and properly dispose of wastes, such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality;
- 5.2.4.3 Review all site plans for potential water quality impacts, including erosion and sediment control, control of other wastes, and any other impacts that must be examined according to the requirements of the law, ordinance, or other enforceable mechanism of Part 5.2.4.2. Before ground is broken at the construction site, the small MS4 operator must review the plans and verify (in written communication with the construction site operator) that the BMPs for the site are appropriate;
- 5.2.4.4 Develop and implement procedures for site inspection and enforcement of control measures (including enforcement escalation procedures for recalcitrant or repeat offenders). Where the permittee lacks legal authority for direct enforcement action, the program must include notification procedures and if a construction site operator fails to comply with procedures or policies established by the permittee, the permittee may rely on EPA and the state environmental agency for assistance in enforcement of this provision of the permit;
- 5.2.4.5 Include the following information in the SWMP:
 - 5.2.4.5.1 A description or citation of the established ordinance or other regulatory mechanism used to prohibit erosion and waste on construction sites. If the permittee needs to develop the required regulatory mechanism, describe the plan and a schedule to do so;
 - 5.2.4.5.2 A description of the sanctions and enforcement mechanism(s) to ensure compliance (including enforcement escalation procedures for recalcitrant or repeat offenders);
 - 5.2.4.5.3 A description of the procedures for site inspection and enforcement of control measures (including enforcement escalation procedures for recalcitrant or repeat offenders), and procedures for site plan reviews.;
 - 5.2.4.5.4 Procedures for receipt, acknowledgment and consideration of information submitted by the public;

- 5.2.4.5.5 A list of measurable goals for the construction site runoff control program;
- 5.2.4.5.6 Dates by which the permittee will achieve specific measurable goals; and
- 5.2.4.5.7 The name of the person(s) responsible for overseeing construction site runoff control activities.

5.2.5 ***Post-Construction Storm Water Management in New Development and Redevelopment.*** The permittee must:

- 5.2.5.1 Develop, implement, and enforce a program to address storm water runoff from new development and redevelopment projects that disturb greater than or equal to one acre, including projects less than one acre that are part of a larger common plan of development or sale, and discharge into the small MS4. The program must ensure that controls are in place that would prevent or minimize water quality impacts;
- 5.2.5.2 Develop and implement strategies that include a combination of structural and/or non-structural BMPs appropriate for the community;
- 5.2.5.3 Use an ordinance or other regulatory mechanism to address post-construction runoff from new development and redevelopment projects to the extent allowable under the legal authorities of the small MS4;
- 5.2.5.4 Ensure adequate long-term operation and maintenance of BMPs; and
- 5.2.5.5 Include the following information in the SWMP:
 - 5.2.5.5.1 A description of the management practices to reduce post-construction runoff from new development and redevelopment projects within the MS4; address any specific priority areas and tailor to the local community;
 - 5.2.5.5.2 A description or citation of the established ordinance or other regulatory mechanism used to address post-construction runoff control. If the permittee needs to develop the required regulatory mechanism, describe the plan and a schedule to do so;
 - 5.2.5.5.3 A description of the procedure to ensure compliance with local requirements;
 - 5.2.5.5.4 Education program for developers and the public about project designs that minimize water quality impacts;
 - 5.2.5.5.5 An identification of the measurable goals for the post-construction runoff control program;

- 5.2.5.5.6 Dates by which the permittee will achieve specific measurable goals; and
- 5.2.5.5.7 The name of the person(s) responsible for the development, implementation, and enforcement of post-construction storm water management.
- 5.2.6 ***Pollution Prevention/Good Housekeeping for Municipal Operations.*** The permittee must:
 - 5.2.6.1 Develop and implement an operation and maintenance program that includes a training component and has the ultimate goal of preventing or reducing pollutant runoff from municipal operations due to activities, including but not limited to, park and open space maintenance, fleet and building maintenance, new construction and land disturbances, and storm water system maintenance. The permittee must address the following topics in the program:
 - 5.2.6.1.1 Maintenance activities, maintenance schedules, and long-term inspection procedures for controls to reduce floatables and other pollutants to the small MS4;
 - 5.2.6.1.2 Controls to reduce or eliminate the discharge of pollutants from streets, roads, highways, municipal parking lots, maintenance and storage yards, waste transfer stations, fleet or maintenance shops with outdoor storage areas, and salt and sand storage locations and snow disposal areas; and
 - 5.2.6.1.3 Procedures to properly dispose of waste removed from the small MS4 and municipal operations, including dredge spoil, accumulated sediments, floatables, and other debris; and
 - 5.2.6.1.4 Procedures to ensure that new flood management projects are assessed for impacts on water quality and existing projects are assessed for incorporation of additional water quality protection devices or practices;
 - 5.2.6.2 Include the following information in the SWMP:
 - 5.2.6.2.1 A list of the municipal operations impacted by this operation and maintenance program;
 - 5.2.6.2.2 A list of industrial facilities (other than large construction activities defined as industrial activity) owned or operated by the permittee that ultimately discharge to the small MS4 and are subject to:
 - 5.2.6.2.2.1 The Multi-Sector General Permit (MSGP), or
 - 5.2.6.2.2.2 Individual NPDES permit for discharges of storm water associated with industrial activity;

- 5.2.6.2.3 A map showing the industrial facilities owned and operated by the MS4;
- 5.2.6.2.4 The EPA permit authorization number or a MSGP NOI form for each facility;
- 5.2.6.2.5 A description of the training program for municipal employees;
- 5.2.6.2.6 A list of measurable goals for the municipal pollution prevention program;
- 5.2.6.2.7 Dates by which the permittee will achieve specific measurable goals; and
- 5.2.6.2.8 The name of the person(s) responsible for implementing and coordinating employee training and pollution prevention activities.

5.2.6.3 *Facilities with Discharges of Storm Water Associated with Industrial Activity:* Those areas of a permittee's facilities covered under a separate permit for storm water discharges associated with industrial activity (e.g., the Multi-Sector General Permit) are not subject to the requirements of Part 5.2.6. Any areas at a permittee's facilities that are not covered by a separate permit must be addressed under Part 5.2.6. The permittee must document in the SWMP which of its facilities are covered under a separate permit for storm water discharges.

5.3 Qualifying State, Tribal or Local Program. The permittee may substitute the BMPs and measurable goals of an existing storm water pollution control program to qualify for compliance with one or more of the minimum control measures if the existing measure meets the requirements of the minimum control measure as established in Part 5.2.

5.4 Sharing Responsibility. Implementation of one or more of the minimum measures may be shared with another entity, or the entity may fully take over the measure. A permittee may rely on another entity only if:

- 5.4.1 The other entity, in fact, implements the control measure;
- 5.4.2 The control measure, or component of that measure, is at least as stringent as the corresponding permit requirement;
- 5.4.3 The other entity agrees to implement the control measure on the permittee's behalf. Written acceptance of this obligation is expected. The permittee must maintain this obligation as part of the SWMP description. If the other entity agrees to report on the minimum measure, the permittee must supply the other entity with the reporting requirements in Part 5.8 of this general permit. The permittee remains responsible for compliance with the permit obligations if the other entity fails to implement the control measure component;

5.5 Reviewing and Updating SWMPs.

- 5.5.1 The permittee must annually review the SWMP in conjunction with preparation of

the annual report required under Part 5.8.

- 5.5.2 The permittee may change the SWMP during the life of the permit according to the following procedures:
 - 5.5.2.1 Changes adding (but not subtracting or replacing) components, controls, or requirements to the SWMP may be made at any time upon written notification to EPA;
 - 5.5.2.2 Changes replacing an ineffective or infeasible management practice specifically identified in the SWMP with an alternate management practice may be requested at any time. Unless denied by EPA, changes proposed according to the criteria below are deemed approved and may be implemented 60 days after submitting the request. If the request is denied, EPA will send a written response giving a reason for the decision. Modification requests must include:
 - 5.5.2.2.1 An analysis of why the management practice is ineffective or infeasible (including cost prohibitive),
 - 5.5.2.2.2 Expectations on the effectiveness of the replacement management practice, and
 - 5.5.2.2.3 An analysis of why the replacement management practice is expected to achieve the goals of the management practice to be replaced;
 - 5.5.2.3 Change requests or notifications must be made in writing and signed in accordance with Part 6.8;
- 5.5.3 EPA may notify a permittee that changes to the SWMP are necessary:
 - 5.5.3.1 To address impacts on receiving water quality caused, or contributed to, by discharges from the MS4;
 - 5.5.3.2 To include more stringent requirements necessary to comply with new federal or state statutory or regulatory requirements;
 - 5.5.3.3 To include other conditions deemed necessary by EPA to comply with the surface water quality standards, ESA related requirements, and/or other goals and requirements of the CWA, or
 - 5.5.3.4 If, at any time, EPA determines that the SWMP does not meet permit requirements.
- 5.5.4 Within 30 days of receipt of notification as described in Part 5.5.3 above, the permittee must make the required changes to the SWMP and submit to EPA a written statement certifying that the requested changes have been made. EPA will request changes in writing, and offer an opportunity to propose alternative program changes

to meet the objective of the requested modification.

5.5.5 Transfer of Ownership, Operational Authority, or Responsibility for SWMP Implementation. The permittee must implement the SWMP on all new areas added to the permittee's portion of the MS4 (or for which the permittee becomes responsible for implementation of storm water quality controls) as expeditiously as practicable, but not later than one year from addition of the new areas. Implementation may be accomplished in a phased manner to allow additional time for controls that cannot be implemented immediately.

5.5.5.1 Within 90 days of a transfer of ownership, operational authority, or responsibility for SWMP implementation, the permittee must have a plan for implementing the SWMP on all affected areas. The plan may include schedules for implementation. Information on all new annexed areas and any resulting updates required to the SWMP must be included in the annual report.

5.5.5.2 Only those portions of the SWMP specifically required as permit conditions must be subject to the modification requirements of 40 CFR 124.5. Addition of components, controls, or requirements by the permittee(s) and replacement of an ineffective or infeasible BMP implementing a required component of the SWMP with an alternate BMP expected to achieve the goals of the original BMP must be considered minor changes to the SWMP and not modifications to the permit.

5.6 Monitoring

5.6.1 The permittee must evaluate program compliance, the appropriateness of identified best management practices, and progress toward achieving identified measurable goals. If the permittee discharges to a water for which a TMDL has been established, the permittee must monitor to determine if the storm water controls are adequate to maintain compliance with the MS4's wasteload allocation.

5.6.2 If the permittee conducts monitoring at the permitted small MS4, the permittee must comply with the following:

5.6.2.1 *Representative monitoring.* Samples and measurements taken for the purpose of monitoring must be representative of the monitored activity.

5.6.2.2 *Test Procedures.* Monitoring results must be conducted according to test procedures approved under 40 CFR Part 136.

5.6.2.3 *Discharge Monitoring Report.* Monitoring results must be reported on a Discharge Monitoring Report (DMR).

5.6.3 Records of monitoring information must include:

5.6.3.1 The date, exact place, and time of sampling or measurements;

- 5.6.3.2 The names(s) of the individual(s) who performed the sampling or measurements;
- 5.6.3.3 The date(s) analyses were performed;
- 5.6.3.4 The names of the individuals who performed the analyses;
- 5.6.3.5 The analytical techniques or methods used; and
- 5.6.3.6 The results of such analyses.

5.7 Recordkeeping

- 5.7.1 The permittee must retain records of all monitoring information, including, all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, copies of Discharge Monitoring Reports (DMRs), a copy of the NPDES permit, and records of all data used to complete the application (NOI) for this permit, for a period of at least three years from the date of the sample, measurement, report or application, or for the term of this permit, whichever is longer. This period may be extended by request of the permitting authority at any time.
- 5.7.2 The permittee must submit its records to the permitting authority only when specifically asked to do so. The permittee must retain a description of the SWMP required by this permit (including a copy of the permit language) at a location accessible to the permitting authority. The permittee must make its records, including the notice of intent (NOI) and the description of the SWMP, available to the public if requested to do so in writing.

5.8 Annual Reports

- 5.8.1 The permittee must submit annual reports to EPA for each year of the permit term covering the activities of the permittee during the twelve (12) month period beginning the 1st day of the calendar month following the effective date of the permit. A suggested format for the report is contained in Appendix D. The first report is due 15 months from the 1st day of the month following the effective date of the permit, with subsequent reports covering the same periods are due annually thereafter (and continuing into any administrative continuance of the permit, should it not be reissued prior to expiration). The report must include:
 - 5.8.1.1 The status of compliance with permit conditions, an assessment of the appropriateness of the identified best management practices, progress towards achieving the statutory goal of reducing the discharge of pollutants to the Maximum Extent Practicable (MEP), and the measurable goals for each of the minimum control measures;
 - 5.8.1.2 Results of information collected and analyzed, if any, during the reporting

period, including monitoring data used to assess the success of the program at reducing the discharge of pollutants to the MEP;

- 5.8.1.3 A summary of the storm water activities the permittee plans to undertake during the next reporting cycle (including an implementation schedule);
 - 5.8.1.4 Proposed changes to the storm water management program, including changes to any BMPs or any identified measurable goals that apply to the program elements;
 - 5.8.1.5 Description and schedule for implementation of additional BMPs that may be necessary, based on monitoring results, to ensure compliance with applicable TMDLs; and
 - 5.8.1.6 Notice that the permittee is relying on another government entity to satisfy some of the permit obligations (if applicable).
- 5.8.2 Where to Submit. Annual reports must be submitted to EPA at the following address:

U.S. EPA, Region 6
Compliance Assurance and Enforcement Division
Water Enforcement Branch (6EN-WC)
1445 Ross Avenue
Dallas, Texas 75202-2733

PART 6 STANDARD PERMIT CONDITIONS

- 6.1 Duty to Comply. The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of CWA and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

6.1.1 *Criminal Violations.*

Negligent Violations. The CWA provides that any person who *negligently* violates permit conditions implementing section 301, 302, 306, 307, 308, 318 or 405 of the Act, or any condition or limitation implementing any of such sections in a permit issued under section 402, or any requirement imposed in a pretreatment program approved under sections 402(a)(3) or 402(b)(8) of the Act, is subject to a fine of not less than \$2,500 nor more than \$25,000 per day of violation, or by imprisonment for not more than 1 year, or both. In the case of a second, or subsequent conviction for a negligent violation, a person shall be subject to criminal penalties of not more than \$50,000 per day of violation, or by imprisonment of not more than 2 years, or both.

Knowing Violations. The CWA provides that any person who *knowingly* violates permit conditions implementing section 301, 302, 306, 307, 308, 318 or 405 of the

Act, or any condition or limitation implementing any of such sections in a permit issued under section 402 of the Act, or any requirement imposed in a pretreatment program approved under sections 402(a)(3) or 402(b)(8) of the Act, is subject to a fine of not less than \$5,000 nor more than \$50,000 per day of violation, or by imprisonment for not more than 3 years, or both. In the case of a second, or subsequent conviction for a knowing violation, a person shall be subject to criminal penalties of not more than \$100,000 per day of violation, or by imprisonment of not more than 6 years, or both.

Knowing Endangerment. The CWA provides that any person who *knowingly* violates permit conditions implementing section 301, 302, 306, 307, 308, 318 or 405 of the Act, or any condition or limitation implementing any of such sections in a permit issued under section 402 of the Act, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury shall, upon conviction be subject to a fine not more than \$250,000 or by imprisonment for not more than 15 years, or both. In the case of a second, or subsequent conviction for a knowing endangerment violation, a person shall be subject to criminal penalties of not more than \$500,000 per day of violation, or by imprisonment of not more than 30 years, or both. An organization, as defined in section 309(c)(3)(B)(iii) of the CWA shall, upon conviction of violating the imminent danger provision, be subject to a fine of not more than \$1,000,000 and can be fined up to \$2,000,000 for second or subsequent convictions.

False Statement. The CWA provides that any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the Act or who knowingly falsifies, tampers with, or renders inaccurate, any monitoring device or method required to be maintained under the Act, shall upon conviction, be punished by a fine of not more than \$10,000 or by imprisonment for not more than two years, or by both. If a conviction is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than \$20,000 per day of violation, or by imprisonment of not more than four years, or by both. (See section 309(c)(4) of the Clean Water Act).

6.1.2 *Civil Penalties.*

The CWA provides that any person who violates a permit condition implementing section 301, 302, 306, 307, 308, 318 or 405 of the Act or any condition or limitation implementing any of such sections in a permit issued under section 402 of the Act, or any requirement imposed in a pretreatment program approved under sections 402(a)(3) or 402(b)(8) of the Act is subject to a civil penalty not to exceed \$27,500 per day for each violation.

6.1.3 *Administrative Penalties.*

The CWA provides that any person who violates a permit condition implementing section 301, 302, 306, 307, 308, 318 or 405 of the Act or any condition or limitation implementing any of such sections in a permit issued under section 402 of the Act, or any requirement imposed in a pretreatment program approved under sections 402(a)(3) or 402(b)(8) of the Act is subject to an administrative penalty as follows:

Class I penalty. Not to exceed \$11,000 per violation nor shall the maximum amount exceed \$27,500.

Class II penalty. Not to exceed \$11,000 per day for each day during which violation continues nor shall the maximum amount exceed \$137,500.

- 6.2 Duty to Reapply. If a permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit.
- 6.3 Continuation of the Expired General Permit. If this permit is not reissued or replaced prior to the expiration date, it will be administratively continued in accordance with the Administrative Procedures Act and remain in force and effect. Any permittee who was granted permit coverage prior to the expiration date will automatically remain covered by the continued permit until the earlier of:
 - 6.3.1 Reissuance or replacement of this permit, at which time the permittee must comply with the Notice of Intent conditions of the new permit to maintain authorization to discharge; or
 - 6.3.2 Issuance of an individual permit for your discharges; or
 - 6.3.3 A formal permit decision by the permitting authority not to reissue this general permit, at which time the permittee must seek coverage under an alternative general permit or an individual permit.
- 6.4 Need to Halt or Reduce Activity Not a Defense. It shall not be a defense for the permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.
- 6.5 Duty to Mitigate. The permittee must take all reasonable steps to minimize or prevent any discharge in violation of this permit that has a reasonable likelihood of adversely affecting human health or the environment.
- 6.6 Duty to Provide Information. The permittee must furnish to the Director, within a reasonable time, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. The permittee must also furnish to the Director upon request, copies of records required to be kept by this permit.

- 6.7 Other Information. If the permittee becomes aware that the permittee has failed to submit any relevant facts in the Notice of Intent or submitted incorrect information in the Notice of Intent or in any other report to the permitting authority, the permittee must promptly submit such facts or information.
- 6.8 Signatory Requirements. All Notices of Intent, Notices of Termination, reports, certifications, or information submitted to the permitting authority, or that this permit requires be maintained by the permittee must be signed and certified as follows:
- 6.8.1 All Notices of Intent must be signed and certified as follows:
- 6.8.1.1 For a corporation: By a responsible corporate officer. For the purpose of this Part, a responsible corporate officer means: (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.
- 6.8.1.2 For a partnership or sole proprietorship: By a general partner or the proprietor, respectively; or
- 6.8.1.3 For a municipality, State, Federal, or other public agency: By either a principal executive officer or ranking elected official. For purposes of this Part, a principal executive officer of a Federal agency includes (i) the chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrator of EPA). *NOTE: The examples for federal agencies can be extended to similar situations for State or Local agencies.*
- 6.8.2 All NOTs, SWPPPs, reports, certifications, or other information required by this permit must be signed by a person described in Part 6.8.1 above or by a duly authorized representative of that person. A person is a duly authorized representative only if:
- 6.8.2.1 The authorization is made in writing by a person described in Part 6.8.1;
- 6.8.2.2 The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such

as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position); and

6.8.2.3 The signed and dated written authorization is included in the SWMP. A copy must be submitted to EPA, if requested.

6.8.3 Changes to Authorization. If an authorization is no longer accurate because a different operator has the responsibility for the overall operation of the MS4, a new authorization satisfying the requirement of 6.8.2 above must be completed prior to or together with any reports, information, or notices of intent to be signed by an authorized representative.

6.8.4 Any person signing documents under the terms of this permit must make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

6.9 Property Rights. The issuance of this permit does not convey any property rights of any sort, or any exclusive privilege, nor does it authorize any injury to private property nor any invasion of personal rights, nor any infringement of Federal, State or local laws or regulations.

6.10 Proper Operation and Maintenance. The permittee must at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used to achieve compliance with the conditions of this permit and with the conditions of the permittee's storm water management program. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. Proper operation and maintenance requires the operation of backup or auxiliary facilities or similar systems, installed only when the operation is necessary to achieve compliance with the conditions of the permit.

6.11 Inspection and Entry. The permittee must allow the permitting authority or an authorized representative (including an authorized contractor acting as a representative of the Administrator) upon the presentation of credentials and other documents as may be required by law, to do any of the following:

6.11.1 Enter the premises where a regulated facility or activity is located or conducted or

where records must be kept under the conditions of this permit;

- 6.11.2 Have access to and copy at reasonable times, any records that must be kept under the conditions of this permit;
 - 6.11.3 Inspect at reasonable times any facilities or equipment (including monitoring and control equipment) practices, or operations regulated or required under this permit; and
 - 6.11.4 Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the CWA, any substances or parameters at any location.
- 6.12 Permit Actions. This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.
- 6.13 Permit Transfers. This permit is not transferable to any person except after notice to the permitting authority. The permitting authority may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the Act.
- 6.14 Anticipated Noncompliance. The permittee must give advance notice to the permitting authority of any planned changes in the permitted small MS4 or activity which may result in noncompliance with this permit.
- 6.15 State/Tribal Environmental Laws.
- 6.15.1 Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable State/Tribal law or regulation under authority preserved by section 510 of the Act.
 - 6.15.2 No condition of this permit releases the permittee from any responsibility or requirements under other environmental statutes or regulations.
- 6.16 Severability. The provisions of this permit are severable, and if any provision of this permit or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit shall not be affected thereby.
- 6.17 Procedures for Modification or Revocation. Permit modification or revocation will be conducted according to 40 CFR 122.62, 122.63, 122.64 and 124.5.
- 6.18 Requiring an Individual Permit or an Alternative General Permit.

- 6.18.1 *Request by permitting authority.* The permitting authority may require any person seeking authority under, or authorized by, this permit to apply for and/or obtain either an individual NPDES permit or an alternative NPDES general permit. Any interested person may petition the permitting authority to take action under this paragraph. Where the permitting authority requires the permittee to apply for an individual NPDES permit, the permitting authority will notify the permittee in writing that a permit application is required. This notification shall include a brief statement of the reasons for this decision, an application form, a statement setting a deadline for the permittee to file the application, and a statement that on the effective date of issuance or denial of the individual NPDES permit or the alternative general permit as it applies to the individual permittee, coverage under this general permit shall automatically terminate. Applications must be submitted to EPA, Region 6. The permitting authority may grant additional time to submit the application upon request of the MS4 operator. If the permittee fails to submit in a timely manner an individual NPDES permit application as required by the permitting authority under this paragraph, then the applicability of this permit to the permittee is automatically terminated at the end of the day specified by the permitting authority for application submittal. This paragraph does not apply to any person whom the permitting authority determines was never eligible under Part I.D. The permitting authority may also notify a discharger to file for an individual permit prior to submission of an NOI.
- 6.18.2 *Request by permittee.* Any discharger authorized by this permit may request to be excluded from the coverage of this permit by applying for an individual permit. In such cases, the permittee must submit an individual application in accordance with the requirements of 40 CFR 122.33(b)(2), with reasons supporting the request, to EPA, Region 6. The request may be granted by issuance of any individual permit or an alternative general permit if the reasons cited by the permittee are adequate to support the request.
- 6.18.3 *General permit termination.* When an individual NPDES permit is issued to a discharger otherwise subject to this permit, or the permittee is authorized to discharge under an alternative NPDES general permit, the applicability of this permit to the individual NPDES permittee is automatically terminated on the effective date of the individual permit or the date of authorization of coverage under the alternative general permit, whichever the case may be. When an individual NPDES permit is denied to an operator otherwise subject to this permit, or the operator is denied for coverage under an alternative NPDES general permit, the applicability of this permit to the individual NPDES permittee is automatically terminated on the date of such denial, unless otherwise specified by the permitting authority.

PART 7 DEFINITIONS

All definitions contained in Section 502 of the Act and 40 CFR 122 shall apply to this permit and are incorporated herein by reference. For convenience, simplified explanations of

some regulatory/statutory definitions have been provided, but in the event of a conflict, the definition found in the Statute or Regulation takes precedence.

"Best Management Practices" ("BMPs") means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants to waters of the United States. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

"Control Measure" as used in this permit, refers to any Best Management Practice or other method used to prevent or reduce the discharge of pollutants to waters of the United States.

"CWA" means the Clean Water Act or the Federal Water Pollution Control Act, 33 U.S.C. §1251 et seq.

"Discharge" when used without qualification means the "discharge of a pollutant."

"Discharge-related activities" include: activities which cause, contribute to, or result in storm water point source pollutant discharges; and measures to control storm water discharges, including the siting, construction and operation of best management practices (BMPs) to control, reduce or prevent storm water pollution.

"Facility" means any NPDES "point source" or any other facility (including land or appurtenances thereto) that is subject to regulation under the NPDES program.

"Illicit Connection" means any man-made conveyance connecting an illicit discharge directly to a municipal separate storm sewer.

"Illicit discharge" means any discharge to a municipal separate storm sewer that is not composed entirely of storm water except discharges pursuant to a NPDES permit (other than the NPDES permit for discharges from the municipal separate storm sewer) and discharges resulting from fire fighting activities.

"Indian country" means:

- a. All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation;
- b. All dependent Indian communities within the borders of the United States whether within the originally or subsequently acquired territory thereof, and whether within or without the limits of a state; and
- c. All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. This definition includes all land held in trust for an Indian tribe.

"Large or Medium Municipal Separate Storm Sewer System" means all municipal separate storm sewers as defined at 40 CFR 122.26(b)(4) or (7).

“MEP” means maximum extent practicable, the technology-based discharge standard for municipal separate storm sewer systems to reduce pollutants in storm water discharges. A discussion of MEP as it applies to small MS4s is found at 40 CFR 122.34. CWA section 402(p)(3)(B)(iii) requires that a municipal permit “shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system design, and engineering methods, and other provisions such as the Administrator or the State determines appropriate for the control of such pollutants.”

“Measurable Goal” means a quantitative measure of progress in implementing a component of a storm water management program.

“MS4” means municipal separate storm sewer system.

“MS4 Area” refers to:

- The areas within the operator’s Municipal Separate Storm Sewer System where storm water discharges originate and flow toward the point of discharge into the receiving waters and the immediate vicinity. (Example: 1. Where bald eagles nest in a tree that is on or bordering a construction site and could be disturbed by the construction activity or where grading causes storm water to flow into a small wetland or other habitat that is on the site that contains listed species.)
- The areas where storm water discharges flow from the construction site to the point of discharge into receiving waters. (Example: Where storm water flows into a ditch, swale, or gully that leads to receiving waters and where listed species (such as amphibians) are found in the ditch, swale, or gully.)
- The areas where storm water from construction activities discharge into receiving waters and the areas in the immediate vicinity of the point of discharge. (Example: Where storm water from construction activities discharges into a stream segment that is known to harbor listed aquatic species.)
- The areas where storm water BMPs will be constructed and operated, including any areas where storm water flows to and from BMPs. (Example: Where a storm water retention pond would be built.)
- The areas upstream and /or downstream from construction activities discharges into a stream segment that may be affected by the said discharges. (Example: Where sediment discharged to a receiving stream settles downstream and impacts a breeding area of a listed aquatic species.)

“Municipal separate storm sewer” means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, and storm drains):

- a. Owned or operated by a state, city, town county, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or a designated and approved management agency under section 208 of the Clean Water Act (33 U.S.C. 1288) that discharges to waters of the United States;
- b. Designed or used for collecting or conveying storm water;
- c. That is not a combined sewer; and
- d. That is not part of a publicly owned treatment works.

“NOI” means Notice of Intent to be covered by this permit (see Part II of this permit).

“NOT” means Notice of Termination.

“Outfall” means a point source as defined by 40 CFR 122.2 at the point where a municipal separate storm sewer discharges to waters of the United States and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or other conveyances which connect segments of the same stream or other waters of the United States and are used to convey waters of the United States.

“Owner or operator” means the owner or operator of any "facility or activity" subject to regulation under the NPDES program.

“Permitting Authority” means EPA, Region 6.

“Point source” means any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff.

“Pollutant” is defined at 40 CFR 122.2. A partial listing from this definition includes: dredged spoil, solid waste, sewage, garbage, sewage sludge, chemical wastes, biological materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial or municipal waste.

“Significant contributors of pollutants” means any discharge that causes or could cause or contribute to a violation of surface water quality standards.

“Small Municipal Separate Storm Sewer System” all separate storm sewers that are:

1. Owned or operated by the United States, a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States.
2. Not defined as "large" or "medium" municipal separate storm sewer systems in accordance with this permit
3. This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and highways and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings.

“Storm Water” means storm water runoff, snow melt runoff, and surface runoff and drainage.

“Storm Water Management Program (SWMP)” means a comprehensive program to manage the quality of storm water discharged from the municipal separate storm sewer system.

PART 8 PERMIT CONDITIONS APPLICABLE TO SPECIFIC AREAS OR INDIAN COUNTRY LANDS

The provisions of Part 8 provide modifications or additions to the applicable conditions of Parts 1 through 7 of this permit to reflect specific additional conditions required as part of the State or Tribal CWA section 401 certification process or as otherwise established by the permitting authority. **(Reserved for conditions that could result from public comments and/or the CWA 401 certification process)**

Appendix A - Endangered Species Guidance

A. Background

To meet its obligations under the Clean Water Act and the Endangered Species Act (ESA) and to promote those Acts' goals, the Environmental Protection Agency (EPA) is seeking to ensure the activities regulated by this small MS4 general permit pose no jeopardy to endangered and threatened species and critical habitat. To ensure that those goals are met, MS4 operators for permit coverage are required under Part 1.5 to assess the impacts of their storm water discharges, allowable non-storm water discharges, and discharge-related activities on Federally listed endangered and threatened species (“listed species”) and designated critical habitat (“critical habitat”) by following the process listed below. EPA strongly recommends that you follow these steps at the earliest possible stage to ensure that measures to protect listed species and critical habitat are incorporated early in your planning process.

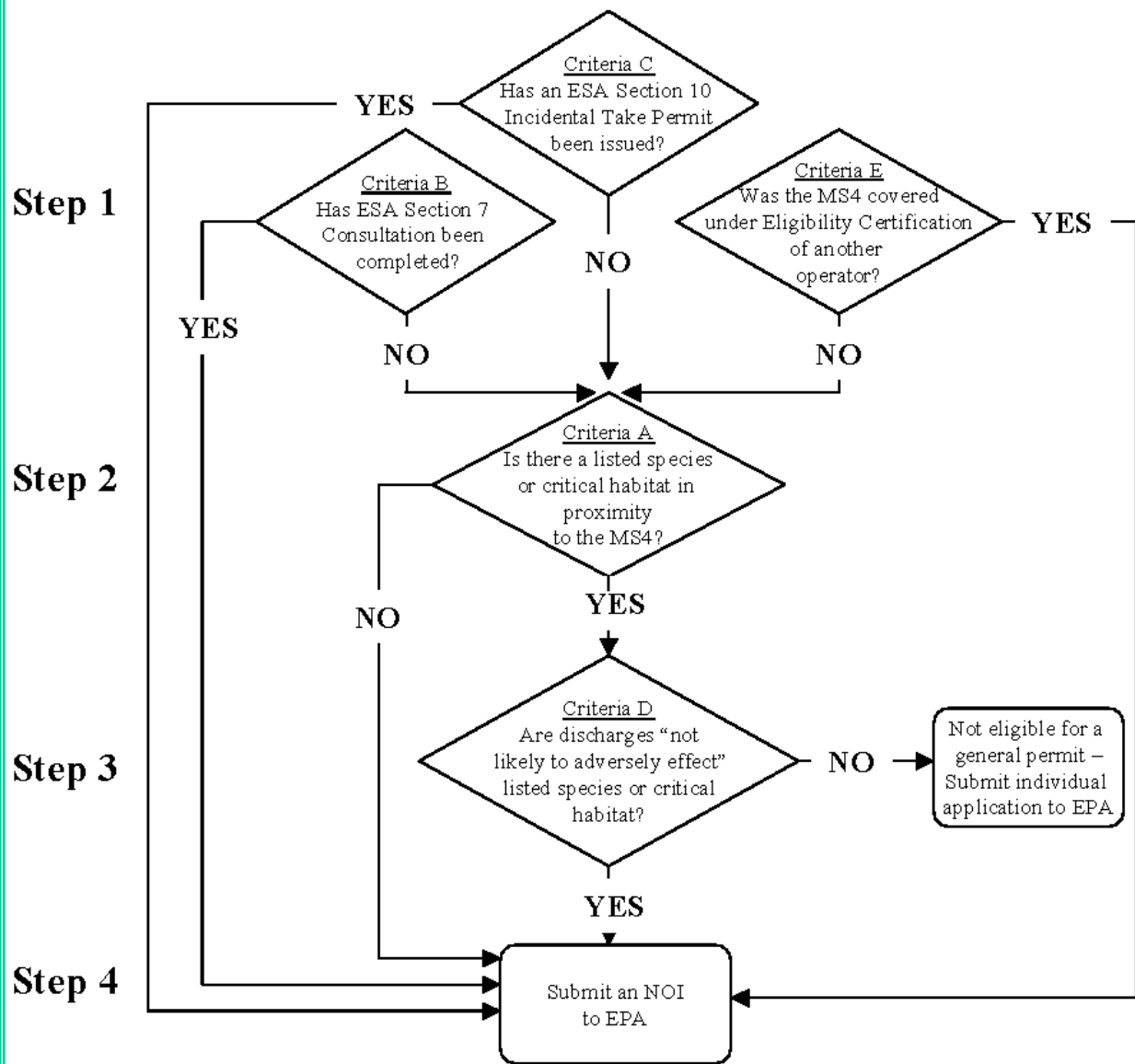
You also have an independent ESA obligation to ensure that your activities do not result in any prohibited “takes” of listed species.¹ Many of the measures required in the general permit and in these instructions to protect species may also assist you in ensuring that your activities do not result in a prohibited take of species in violation of section 9 of the ESA. If you have or plan activities in areas that harbor endangered and threatened species, you may wish to ensure that you are protected from potential takings liability under ESA section 9 by obtaining an ESA section 10 permit or, if there is a separate federal action regarding the MS4, by requesting formal consultation under ESA section 7 regarding that action. If you are not sure whether to pursue a section 10 permit or a section 7 consultation for takings protection, you should confer with the appropriate Fish and Wildlife Service (FWS) and/or National Marine Fisheries Service (NMFS) (collectively the “Services”) office.

B. How Does the Eligibility Process Work?

Before submitting a notice of intent (NOI) for coverage by this permit, applicants must determine whether they meet the ESA eligible criteria by following the steps in Section “D” below. The following flow chart is a summary of the process. However, the individual steps should be followed to make sure the details of each eligibility criteria are met. Applicants who cannot meet any of the eligibility criteria must apply for an individual permit.

¹Section 9 of the ESA prohibits any person from “taking” a listed species (e.g., harassing or harming it) unless: (1) the taking is authorized through a “incidental take statement” as part of undergoing ESA section 7 formal consultation; (2) where an incidental take permit is obtained under ESA section 10 (which requires the development of a habitat conservation plan); or (3) where otherwise authorized or exempted under the ESA. This prohibition applies to all entities including private individuals, businesses, and governments.

Endangered Species Act Eligibility Flowchart



C. The ESA Eligibility Criteria

The ESA eligibility requirements in Part 1.5 of this permit may be satisfied by documenting that one or more of the following criteria have been met. EPA may notify an MS4 operator to pursue eligibility under Criteria B for specific reasons explained in the notification. While not required, it is suggested that both proposed and candidate species be included in any evaluation. Doing so will provide additional protection to the species and help avoid further delays if a species is formally listed after an NOI is submitted for permit coverage.

- Criteria A. No endangered or threatened species or critical habitat are in proximity to the MS4 or the point(s) where authorized discharges reach waters of the United States (see Part 1.5.3.1).
- Criteria B. In the course of a separate federal action involving the MS4, formal or informal consultation with the fish and wildlife service under Section 7 of the ESA has been concluded (see Part 1.5.3.2).
- Criteria C. An incidental take permit was issued, under Section 10 of the ESA, and that authorization addressed the effects of the storm water discharges, allowable non-storm water discharges, and discharge-related activities on listed species and critical habitat (see Part 1.5.3.3)
- Criteria D. The applicant has determined adverse effects are not likely based on an evaluation of the effects of the MS4's storm water discharges, allowable non-storm water discharges, and discharge-related activities on listed endangered or threatened species and critical habitat (see part 1.5.3.4).
- Criteria E. The storm water discharges, allowable non-storm water discharges, and discharge-related activities of the MS4 were already addressed in another operator's certification of eligibility under Criteria A, B, C, or D above (see part 1.5.3.5).

D. The Steps To Determine if the ESA Eligibility Criteria Can Be Met

To determine eligibility, the MS4 operator (sometimes referred to as "you"), must assess (or have previously assessed) the potential effects of your storm water discharges, allowable non-storm water discharges and discharge-related activities on listed species and critical habitat, PRIOR to completing and submitting a Notice of Intent (NOI). You must follow the steps outlined below and document the results of your eligibility determination.

Step 1. Determine If You Can Meet Eligibility Criteria "B", "C", or "E" Criteria B.

You can certify eligibility, according to Criteria B, for coverage by this permit if you can answer "Yes" to all of the following questions:

- Has consultation, under ESA Section 7, already been completed for discharges from your MS4²?

²A formal or informal ESA Section 7 consultation on this or another federal action (e.g., New source review under NEPA, application for a dredge and fill permit under CWA Sec. 404, application for an individual NPDES permit, etc.) addressed the effects of your MS4 discharges and discharge-related activities on listed species and critical habitat. (See 50 CFR 402.13).

- Did the previously completed ESA Section 7 consultation consider all currently listed species and critical habitat and address your storm water, allowable non-storm water, and discharge-related activities?
- Did the ESA Section 7 consultation result in either a “no jeopardy” opinion by the Service (for formal consultations) or a concurrence by the service that your activities would be “unlikely to adversely affect” listed species or critical habitat?
- If a biological opinion was issued by the FWS, do you agree to implement all measures upon which the consultation was conditioned?

If you answered “Yes” to all four questions above, you have met ESA eligibility Criteria B. Skip to Step 4.

If you answered “No” to any of the four questions above, check to see if you can meet Criteria C or E, or Go to Step 2.

Criteria C. You can certify eligibility, according to Criteria C, for coverage by this permit if you can answer “Yes” to all of the following questions:

- Has an ESA Section 10 permit already been issued for discharges from your MS4³?
- Does your ESA Section 10 Permit consider all currently listed species and critical habitat, and address your storm water, allowable non-storm water, and discharge related activities, for discharges from your MS4?

If you answered “Yes” to the two questions above, you have met ESA eligibility Criteria C. Skip to Step 4.

If you answered “No” to either of the two questions above, check to see if you can meet Criteria E, or Go to Step 2.

Criteria E. You can certify eligibility, according to Criteria E, for coverage by this permit if you can answer “Yes” to all of the following questions:

- Did another MS4 operator previously certify ESA eligibility for your MS4 area⁴?
- Did the other operator's certification of eligibility consider all currently listed species and critical habitat and address your storm water, allowable non-storm water, and discharge related activities?

³You have a permit under section 10 of the ESA and that authorization addresses the effects of your storm water discharges and discharge-related activities on listed species and critical habitat. You must follow FWS procedures when applying for an ESA section 10 permit (see 50 CFR 17.22(b)(1)).

⁴In order to meet the permit eligibility requirements by relying on another operator's certification of eligibility, the other operator's certification must apply to the location of your MS4 and must address the effects from your storm water discharges, allowable non-storm water discharges, and discharge-related activities on listed species and critical habitat.

- Do you agree to implement all measures upon which the other operator's certification was based?

This situation will typically occur where an ownership of an MS4 covered by this permit changes. Before you rely on another operator's certification, you should carefully review that certification along with any supporting information. You also need to confirm that no additional species have been listed or critical habitat designated in the area of your MS4 since the other operator's endangered species assessment was done. If you do not believe that the other operator's certification provides adequate coverage for your MS4, you should provide your own independent endangered species assessment and certification.

If you answered "Yes" to all three questions above, you have met ESA eligibility Criteria E. Skip to Step 4.

If you answered "No" to any of the three questions above, Go to Step 2.

Step 2. Determine if You Can Meet Eligibility Criteria "A"

Criteria A. You can certify eligibility, according to Criteria A, for coverage by this permit if you can answer "No" to all of the following questions:

- Are there any listed species or critical habitat in your county?
- Are there any listed species or critical habitat in proximity to your MS4 or discharge locations?

Use the processes below to answer these questions.

If you answered "No" to the two questions above, you have met ESA eligibility Criteria A. Skip to Step 4.

If you answered "Yes" to either of the questions above, Go to Step 3.

Check for Listed Species in Your County.

Look at the latest county species list to see if any listed species are found in your county. If you are located close to the border of a county or your MS4 is located in one county and your discharge points are located in another, you must look under both counties. Since species are listed and de-listed periodically, you will need the most current list at the time you are conducting your endangered species assessment. The nearest FWS field office will have the most current list for your county. EPA has developed a county-species list which can be used as a guide, but it is not as accurate as FWS's list (<http://cfpub.epa.gov/npdes/stormwater/endangerspecies.cfm>). Using the latest County Species List available from FWS and any other relevant information sources, you must determine whether listed species or critical habitat are in proximity to your MS4. Listed species and critical habitat are in proximity to an MS4 when they are:

- Located in the path or immediate area through which or over which contaminated point source storm water flows from the MS4 to the point of discharge into the receiving water. This may also include areas where storm water from your MS4 enters groundwater that has a direct hydrological connection to a receiving water (e.g., groundwater infiltrates at your MS4 and re-emerges to enter a surface waterbody within a short period

of time.);

- Located in the immediate vicinity of, or nearby, the point of discharge into receiving waters; or
- Located in the area of an MS4 where storm water BMPs are planned or are to be constructed.

Check for Critical Habitat in Your County.

Some (but not all) listed species have designated critical habitat. Exact locations of such habitat are provided in the endangered species regulations at 50 CFR part 17 and part 226. To determine if MS4 or discharge locations are within designated critical habitat, you should either:

- ii Review those regulations (which can be found in many larger libraries); or
- ii Contact the nearest Fish and Wildlife Service (FWS) field office. A list of FWS field offices is found in section “F” of this Appendix; or
- ii Contact the Colorado Natural Heritage Program. Heritage programs gather, manage, and distribute detailed information about the biological diversity found within their jurisdictions. They frequently have the most current information on listed species and critical habitat. Contact information is provided in section “G” of this Appendix.

Check for Proximity to Your MS4 or MS4 Discharge Locations.

If there are listed species or critical habitat in your county, are they in proximity to your MS4 or discharge locations? To determine whether listed species are in proximity to your MS4, you will need to use the proximity criteria listed in the “Check for Listed Species in Your County” process above. The area in proximity to be searched/surveyed for listed species will vary with the size of the MS4, the nature and quantity of the storm water discharges, and the type of receiving waters. You should use the method(s) which allow you to determine, to the best of your knowledge, whether listed species are in proximity to your particular MS4. These methods may include:

1. Conducting visual inspections. This method may be particularly suitable for MS4s that are smaller in size, MS4s located in non-natural settings such as highly urbanized areas or industrial parks where there is little or no natural habitat and MS4s that discharge directly into municipal storm water collection systems. For other MS4s, a visual survey may not be sufficient to determine whether listed species are in proximity. However, some species may occur only during certain times of the year (e.g., bald eagle).
2. Contacting the nearest State Wildlife Agency or U.S. FWS field offices. Many endangered and threatened species are found in well-defined areas or habitats. That information is frequently known to state or federal wildlife agencies.
3. Contacting local/regional conservation groups such as natural heritage programs (see section G below). These groups inventory species and their locations and maintain lists of sightings and habitats.
4. Conducting a formal biological survey. MS4s with extensive storm water discharges may choose to conduct biological surveys as the most effective way to assess whether listed species are located in proximity and whether there are likely adverse effects.

Step 3. Determine If You Can Meet Eligibility Criteria “D”

Criteria D. You can certify eligibility, according to Criteria D, for coverage by this permit if you can answer “Yes” to all of the following questions:

- Have you determined that your MS4's storm water discharges, allowable non-storm water discharges, and discharge-related activities are “not likely to adversely affect” listed species or critical habitat and/or have you reached agreement with the U.S. FWS on measures to avoid, eliminate, or minimize adverse affects?
- Do you agree to implement all measures upon which the determination was conditioned?

Use the process below to understand adverse affect determinations and to answer these questions.

If you answered “Yes” to both questions above, you have met ESA eligibility Criteria D. Go to Step 4.

If you answered “No” to either of the questions above you are not eligible for coverage by this permit. You must submit an individual application for your discharges to EPA. (See 40 CFR 122.33(b)(2))

If you are unable to certify eligibility under Criteria A, B, C, or E, you must assess whether your storm water discharges, allowable non-storm water discharges, and discharge-related activities are likely to adversely affect listed species or critical habitat. “Storm water discharge-related activities” include: activities which cause, contribute to, or result in point source storm water pollutant discharges and measures to control storm water discharges and allowable non-storm water discharges including the siting, construction, operation of best management practices (BMPs) to control, reduce, or prevent water pollution. Please be aware that no protection from incidental takings liability is provided under this criteria.

The scope of effects to consider will vary with each MS4. If you are having difficulty in determining whether your MS4 is likely to cause adverse effects to a listed species or critical habitat, you should contact the appropriate office of the FWS or Natural Heritage Program for assistance. In order to complete the determination of effects, it may be necessary to follow the consultation procedures in section 7 of the ESA. (See Criteria B information above, and section 7 consultation web link in section G below). Upon completion of your assessment, document the results of your effects determination. If adverse effects are not likely, you are eligible under criteria “D” - proceed to Step 4 of this Addendum. Your determination may be based on measures that you implement to avoid, eliminate, or minimize adverse affects.

If the determination is “May Adversely Affect.” You must contact the FWS to discuss your findings and measures you could implement to avoid, eliminate, or minimize adverse affects. If you and the service(s) reach agreement on measures to avoid adverse effects, you are eligible under criteria “D”. Any terms and/or conditions to protect listed species and critical habitat that you relied on in order to complete an adverse effects determination must be incorporated into your Storm Water Management Program (required by the permit) and implemented in order to maintain permit eligibility.

If endangered species issues cannot be resolved. If you cannot reach agreement with the FWS on measures to avoid, eliminate, or reduce adverse effects and the likely adverse effects cannot be otherwise

addressed through meeting the other criteria of Part 1.5, then you are not eligible for coverage under this general permit. You must seek coverage under an individual permit.

Effects from storm water discharges, allowable non-storm water discharges, and discharge-related activities which could pose an adverse effect include:

- *Hydrological.* Wastewater or storm water discharges may cause siltation, sedimentation, or induce other changes in receiving waters such as temperature, salinity or pH. These effects will vary with the amount of wastewater or storm water discharged and the volume and condition of the receiving water. Where a discharge constitutes a minute portion of the total volume of the receiving water, adverse hydrological effects are less likely.
- *Habitat.* Excavation, site development, grading, and other surface disturbance activities, including the installation or placement of storm water ponds or BMPs, may adversely affect listed species or their habitat. Storm water associated with MS4 operation may drain or inundate listed species habitat.
- *Toxicity.* In some cases, pollutants in storm water may have toxic effects on listed species.

Step 4. Submit Notice of Intent and Document Results of the Eligibility Determination.

Once the Part 1.5 ESA eligibility requirements have been met and you have determined NHPA eligibility (see Addendum B below), you may submit the Notice of Intent (NOI). Signature and submittal of the NOI constitutes your certification, under penalty of law, of your eligibility for permit coverage. You must include documentation of Part 1.5 ESA eligibility in the SWMP required for the MS4. Documentation required for the various ESA eligibility criteria are as follows:

Criteria A: A copy of the most current county species list pages for the county(ies) where your MS4 and discharges are located. You must also include a statement on how you determined that no listed species or critical habitat are in proximity to your MS4 or MS4 discharge locations.

Criteria B: A copy of the FWS's biological opinion or concurrence on a finding of "unlikely to adversely effect" regarding the ESA Section 7 consultation.

Criteria C: A copy of the FWS's letter transmitting the ESA Section 10 authorization.

Criteria D: Documentation on how you determined adverse effects on listed species and critical habitat were unlikely.

Criteria E: A copy of the documents originally used by the other operator of your MS4 (or area including your MS4) to satisfy the documentation requirement of Criteria A, B, C or D.

E. Duty To Implement Terms and Conditions Upon Which Eligibility Was Determined

You must comply with any terms and conditions imposed under the ESA eligibility requirements of Part 1.5 to ensure that your storm water discharges, allowable non-storm water discharges, and discharge-related activities do not pose adverse effects to listed species and/or critical habitat. You must incorporate such terms and conditions into your MS4's SWMP as required by the permit. If the ESA eligibility requirements of Part 1.5 cannot be met, then you may not receive coverage under this permit, and must apply for an individual permit.

F. U.S. Fish and Wildlife Service Offices

National Website For Endangered Species Information. Endangered Species Home page:
<http://www.fws.gov/r9endspp/endspp.html>.

Regional, State, Field and Project Offices

USFWS Region Two

Regional Office

Division Chief, Endangered Species
U.S. Fish and Wildlife Service
ARD Ecological Services
P.O. Box 1306
Albuquerque, NM 87103

Field Supervisor
U.S. Fish and Wildlife Service
New Mexico Field Office
2105 Osuna, NE
Albuquerque, NM 87113

State, Field, and Project Offices (Region Two)

Field Supervisor
U.S. Fish and Wildlife Service
Oklahoma Field Office
222 S. Houston, Suite A
Tulsa, OK 74127

Field Supervisor
U.S. Fish and Wildlife Service
Austin Ecological Serv. Field Office
10711 Burnet Road, Suite 200
Austin, TX 78758

G. Natural Heritage Centers

The Natural Heritage Network comprises 85 biodiversity data centers throughout the Western Hemisphere. These centers collect, organize, and share data relating to endangered and threatened species and habitat. The network was developed to inform land-use decisions for developers, corporations, conservationists, and government agencies and is also consulted for research and educational purposes. The centers maintain a Natural Heritage Network Control Server Website at <http://www.heritage.tnc.org>, which provides website and other access to a large number of specific biodiversity centers. Some of these centers are listed below for the area of coverage of the permit:

Oklahoma Natural Heritage Inventory

Oklahoma Biological Survey
111 East Chesapeake Street
University of Oklahoma
Norman, OK 73019-0575

405/325-1985 Fax: 405/325-7702

Web site: <http://obssun02.uoknor.edu/biosurvey/onhi/home.html>

Texas Biological and Conservation Data System

3000 South IH-35 , Suite 100

Austin, TX 78704

512/912-7011 Fax: 512/912-7058

Appendix B--Historic Properties Guidance

MS4 operators must determine whether their MS4's storm water discharges, allowable non-storm water discharges, or construction of best management practices (BMPs) to control such discharges, have potential to affect a property that is either listed or eligible for listing on the National Register of Historic Places.

For existing dischargers who do not need to construct BMPs for permit coverage, a simple visual inspection may be sufficient to determine whether historic properties are affected. However, for MS4s which are new storm water dischargers and for existing MS4s which are planning to construct BMPs for permit eligibility, MS4 operators should conduct further inquiry to determine whether historic properties may be affected by the storm water discharge or BMPs to control the discharge. In such instances, MS4 operators should first determine whether there are any historic properties or places listed on the National Register or if any are eligible for listing on the register (e.g., they are "eligible for listing").

Due to the large number of entities seeking coverage under this permit and the limited number of personnel available to State and Tribal Historic Preservation Officers nationwide to respond to inquiries concerning the location of historic properties, EPA suggests that MS4 operators first access the "National Register of Historic Places" information listed on the National Park Service's web page (<http://www.nr.nps.gov/nrishome.htm>). Addresses for State Historic Preservation Officers and Tribal Historic Preservation Officers are listed in Parts II and III of this appendix, respectively. In instances where a Tribe does not have a Tribal Historic Preservation Officer, MS4 operators should contact the appropriate Tribal government office when responding to this permit eligibility condition. MS4 operators may also contact city, county or other local historical societies for assistance, especially when determining if a place or property is eligible for listing on the register.

The following three scenarios describe how MS4 operators can meet the permit eligibility criteria for protection of historic properties under this permit:

(1) If historic properties are not identified in the path of an MS4's storm water and allowable non-storm water discharges or where construction activities are planned to install BMPs to control such discharges (e.g., diversion channels or retention ponds), then the MS4 operator has met the permit eligibility criteria under 1.4.6.1.

(2) If historic properties are identified but it is determined that they will not be affected by the discharges or construction of BMPs to control the discharge, the MS4 operator has met the permit eligibility criteria under Part 1.4.6.2.

(3) If historic properties are identified in the path of an MS4's storm water and allowable non-storm water discharges or where construction activities are planned to install BMPs to control such discharges, and it is determined that there is the potential to adversely affect the property, the MS4 operator can still meet the permit eligibility criteria under Part 1.4.6.2 if

he/she obtains and complies with a written agreement with the appropriate State or Tribal Historic Preservation Officer which outlines measures the MS4 operator will follow to mitigate or prevent those adverse effects.

The contents of such a written agreement must be included in the MS4's Storm Water Management Program.

In situations where an agreement cannot be reached between an MS4 operator and the State or Tribal Historic Preservation Officer, MS4 operators should contact the Advisory Council on Historic Preservation listed in Part IV of this Appendix for assistance.

The term "adverse effects" includes but is not limited to damage, deterioration, alteration or destruction of the historic property or place. EPA encourages MS4 operators to contact the appropriate State or Tribal Historic Preservation Officer as soon as possible in the event of a potential adverse effect to a historic property.

MS4 operators are reminded that they must comply with applicable State, Tribal and local laws concerning the protection of historic properties and places.

I. Internet Information on the National Register of Historic Places

An electronic listing of the "National Register of Historic Places," as maintained by the National Park Service on its National Register Information System (NRIS), can be accessed on the Internet at <http://www.nr.nps.gov/nrishome.htm>.

II. State Historic Preservation Officers (SHPO)

SHPO List for areas covered by the permit:

NEW MEXICO

Elmo Baca, SHPO
Historic Preservation Div, Ofc of Cultural Affairs
228 East Palace Avenue
Santa Fe, NM 87503
505-827-6320 FAX: 505-827-6338

Deputy: Dorothy Victor
E-Mail: dvictor@lvr.state.nm.us
Deputy: Jan Biella
E-Mail: jbiella@lvr.state.nm.us
www.museums.state.nm.us/hpd

OKLAHOMA

Dr. Bob L. Blackburn, SHPO
Oklahoma Historical Society
2100 N. Lincoln Blvd.
Oklahoma City, OK 73105
405-521-2491 FAX 405-521-2492
www.ok-history.mus.ok.us

Deputy: Ms. Melvena Thurman Heisch
State Historic Preservation Office
2704 Villa Prom, Shepherd Mall
Oklahoma City, OK 73107
405-522-4484 FAX: 405-947-2918
E-Mail: mheisch@ok-history.mus.ok.us

III. Tribal Historic Preservation Officers (THPO)

In instances where a Tribe does not have a Tribal Historic Preservation Officer, please contact the appropriate Tribal government office when responding to this permit eligibility condition.

Tribal Historic Preservation Officers:

Donna Stern-McFadden
Mescalero Apache Tribe
P.O. Box 227
Mescalero, New Mexico 88340

For more information:

National Association of Tribal Historic Preservation Officers
D. Bambi Kraus, President
1411 K Street NW, Suite 700
Washington, DC 20005
Phone: (202) 628-8476
Fax: (202) 628-2241

IV. Advisory Council on Historic Preservation

Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, NW., Suite 809, Washington, DC 20004 Telephone: (202) 606-8503/8505, Fax: (202) 606-8647/8672, E-mail: achp@achp.gov

Appendix C–Suggested Notice of Intent Format

EPA suggests using the following format as an attachment to a cover letter to submit the Notice of Intent information required under Part 3.2 of the permit.

1. Legal Name of the MS4 Operator _____
Mailing address _____

Contact Person _____
Telephone number _____
2. Operator is a ___Federal___ State ___ Tribal ___ other public entity (check one)
3. The MS4 is located in the _____ urbanized area or
_____ core municipality (if not located in an urbanized area);
in _____ county(ies),
and the latitude and longitude of the approximate center of the small MS4 is

4. The major receiving water(s) are _____.
If the small MS4 discharges to any waters for which an TMDL applicable to discharges
from the MS4 has been approved the SWMP meets the requirements of Part 1.4.8 ___ Yes
___ No ___ N/A
5. The MS4 ___ is ___ is not ___ is partially located on Indian Country lands. If so, the
Indian Country Lands include the following _____
(NOTE: MS4s straddling State and Indian Country land boundaries will be issued
authorization under all applicable permits and may have additional State or Tribal-specific
requirements applicable to different areas of the MS4 - see Part 8)
6. If the MS4 operator is relying on another governmental entity to satisfy one or more permit
obligations (see Part 5.4), the identity of that entity(ies) and the element(s) the entity(ies)
will be implementing ___N/A ___ Required information attached
7. A description of the storm water management program (SWMP), including best
management practices (BMPs) that will be implemented and the measurable goals for each
of the storm water minimum control measures specified in Part 5.3 of this permit, the
month and year in which the MS4 operator will start and fully implement each of the
minimum control measures or the frequency of the action, the name of the person(s)
responsible for implementing or coordinating the SWMP, and the supporting

documentation required by Parts 1.5 and 1.6. is attached.

8. *I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.*

Signed: _____ Date: _____
Printed Name _____

Note: Collection of Notice of Intent information required under 40 CFR 122.33(b)(1) is covered under Paperwork Reduction Act Information Collection Request # 1820.03, OMB NO.: 2040-0211, Expiration Date: 06/30/2006

Appendix D: Suggested Annual Report Format

EPA suggests using the following format to submit the Notice of Intent information required under Part 5.8 of the permit.

MS4 ANNUAL REPORT

Check box if this is a new name, address, etc. ☐

A. PERMITTEE INFORMATION

Permit Number: _____

Permittee: _____

Mailing Address: _____

City, State and Zip Code: _____

Phone Number: _____

Have any areas been added to the MS4 due to annexation or other legal means? ☐ YES ☐ NO
If YES, include updated map.

B. REPORTING PERIOD _____ to _____

C. PROGRAM AREAS (ATTACHMENTS)

As an attachment, address each of the following items for **each** of the six program areas (public education, public participation/involvement, illicit discharge detection and elimination, construction, post-construction, and good housekeeping for municipal operations). The status of each program area must be addressed, even if the program area was completed and fully implemented in a previous reporting year. *Guidance on the items is included in italics.*

If another entity does not have its own permit but is instead covered under your permit, the Annual Report information under Section C must also be provided for each such entity. (Depending on the size of the municipality and the complexity of the programs, the attachments for this section will likely comprise 1 to 5 pages per program area.)

1. Implementation status.

a. General summary

b. Program elements changed or refined since previous report or permit application.
Include a summary of any changes made in accordance with Part 5.5 of the permit.

c. Status of Measurable Goals

Provide:

- i. The completion date for any measurable goals completed during the reporting period.*
- ii. An explanation for any measurable goals scheduled for completion during the reporting period that were not completed. (Any modified goals/deadline should be listed in Item 5, below.)*

2. Overall compliance with permit conditions.

a. Assessment of the appropriateness of the identified BMPs.

Factors to consider in determining appropriateness include, but are not limited to, effectiveness for local population, pollution sources, receiving water concerns, and integration with local management procedures.

b. Progress towards achieving the statutory goal of reducing the discharge of pollutants to the Maximum Extent Practicable (MEP).

Include a general discussion on your assessment of the overall program effectiveness at protecting water quality.

3. Results of information collected and analyzed, if any, during the reporting period, including any monitoring data used to assess the success of the program at reducing the discharge of pollutants to the MEP.

Discharge monitoring is not a requirement under the permit. However, if you did collect any monitoring data for stormwater discharges within your jurisdiction, or if any program element included data collection of some sort, you must submit a short summary of the information and any analysis completed. Examples of data sources include survey/polling results, miles of riverbank cleaned up, number of hits on a website before and after a public education campaign, etc. (Data recorded under Item 1.c, Measurable Goals, does not need to be repeated here.)

4. Brief summary of storm water activities you plan to undertake during the next reporting cycle (including an implementation schedule).

Provide a short summary based on your existing Storm Water Management Program implementation schedule. If any changes are planned from the original descriptions provided in the application or previous reports, they should be summarized in Item 5.

5. Proposed changes to the program area.

a. Changes to BMPs

b. Changes to Measurable Goals

Provide a summary of proposed changes and/or additions to information previously submitted in reports or the permit application. Significant changes that involve replacing or deleting an ineffective or unfeasible BMP may require EPA review as outlined in Part 5.5 of the permit.

6. Statement, if not included in previous reports or application, that you are relying on another government entity to satisfy some of your permit obligations (if applicable).

Another entity may be relied on to perform requirements of your MS4 permit. However, as the permittee, you remain liable for compliance with the terms of the permit if the requirements are not fulfilled. You must complete this Annual Report for the geographic areas covered under your permit, for all program areas, even if one or more program elements is being performed by another entity. (However, if you are performing a program element for another permittee, you do not need to include that activity in this report.)

7. A summary of the number and nature of inspections and formal enforcement actions performed.

Site-specific information may also be included, but is not required. (Information recorded under Item 1.c, Measurable Goals, does not need to be repeated here.)

D. CERTIFICATION

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

Signature of Permittee (legally responsible person)

Date Signed

Name & Title(printed)

Note: Collection of Annual Report information required under 40 CFR 122.34(g)(3) is covered under Paperwork Reduction Act Information Collection Request # 1820.03, OMB NO.: 2040-0211, Expiration Date: 06/30/2006